

REMARKS

The Office Action mailed May 7, 2007, in the nature of a requirement for restriction, has been carefully reviewed. Favorable consideration is respectfully requested.

Restriction has been required among what the Examiner considers to be patentably distinct species of the invention, as follows:

Group I, drawn to N-acyl derivatives of 2-phenylpiperidines, presently comprising claims 1-8; and

Group II, drawn to a process of making 2-acyl derivatives of 2-phenylpiperidines, presently comprising claims 9 and 10.

Applicant hereby elects Group I, claims 1-8, drawn to N-acyl derivatives of 2-phenylpiperidines with traverse,

Applicant hereby elects the species of claim 3, namely, the compound according to claim 1 wherein R¹ is an optionally substituted hydroxyl group.

This election is with traverse because it is respectfully submitted that WO/03066589, Alvaro et al., does not anticipate or make obvious the compounds and method claimed herein.

In the compounds disclosed at page 3 of Alvaro, R⁶ corresponds to R¹ in the formula of claim 1, and Alvaro, R⁶ is said to be hydrogen or NR⁷R⁸. However, in claim 1 of the subject application, R¹ is an optionally substituted alkyl, hydroxyl, thiol, carbonyl, sulfinyl, sulfonyl group or NR¹¹R¹², wherein R¹¹ is a substituted carbonyl group or a substituted sulfonyl group and R¹² represents hydrogen or an optionally substituted alkyl group. In Alvaro, formulae 3(a) to 3(c), when R⁶ is NR⁷R⁸, R⁷ is hydrogen or C₁₋₄ alkyl and R⁸ is hydrogen, phenyl, C₃₋₇ cycloalkyl, (CH₂)_pC(O) C₁₋₄ alkyl or a 6-membered heteroaryl ring.

While Alvaro does disclose piperidyl carboxamide compounds, these are not the compounds claimed in the present application, and therefore the disclosure of Alvaro does not disclose the technical feature on which applicant relies for unity of invention.

If the election requirement is maintained, it will be clear on the record that the PTO considers the groups to be patentably distinct from one another *i.e.*, *prima facie non-obvious* from one another. This means that a reference identical to the one group would not render the other group *prima facie obvious*.

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Favorable consideration and examination of all pending claims on the merits are respectfully requested.

Respectfully submitted,

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